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Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: D.T.E. 01-20 - Resale Avoided Cost Study

Dear Ms. Cottrell:

Verizon Massachusetts ("Verizon MA") submits this letter in response to AT&T's Motion filed March 9, 2001, seeking to dismiss Verizon MA's Resale Avoided Cost Study. AT&T's Motion is based on the same fundamentally flawed premise as Network Plus' motion seeking deferral of this phase of the case. *See* Network Plus' Motion, dated February 27, 2001, at 2-3. That is, the Department's *Vote and Order* opening this proceeding on January 12, 2001, *required* Verizon MA to file a resale cost study in accordance with Federal Communications Commission ("FCC") rules despite the fact that those rules have been declared unlawful in what is now a final determination by the Eighth Circuit Court of Appeals. *Iowa Utilities Board v. F.C.C.*, 219 F.3d 744 (2000). Such a reading of the *Vote and Order* is unwarranted, and the Department should *not* consider using the FCC's invalidated rules because the rates produced would be unlawful, as found by the Eighth Circuit. Rather, as Verizon MA discussed in its March 9th response to the Network Plus Motion, the Eighth Circuit has ruled that the resale pricing standard in § 252(d)(3) of the Act is clear, and the Department should proceed with its examination of the study filed by Verizon MA which applies that standard.

AT&T's Motion to Dismiss relies on the same language in the Department's *Vote and Order* cited by Network Plus to support its request for deferral of the case. It states that:

The Department has determined that, pending a FCC ruling on remand of its pricing rules or a higher court ruling overturning the Eighth Circuit's findings, it will maintain the status quo for UNE prices and the wholesale discount. The status quo in Massachusetts is use of the FCC's TELRIC and avoided cost methods, and despite regulatory uncertainty surrounding it, TELRIC and the avoided cost wholesale discount are the only viable methods to rely upon at this time.

Vote and Order, at 5. AT&T concludes from this language that the Department intended for Verizon MA to develop a resale cost discount based on the pre-existing FCC resale cost methodology - regardless of whether there was a final judicial decision concerning the legality of those rules under the Telecommunications Act of 1996 (the "Act"). AT&T's argument is clearly without merit.

The Department's *Vote and Order* contemplated that the Eighth Circuit's July 18, 2000, decision invalidating the FCC's resale pricing rules might be subject to further review by a higher court and, therefore, might not be the final judicial word concerning the issue. However, following the issuance of the *Vote and Order*, the U.S. Supreme Court choose not to review the Eighth Circuit's ruling, thereby making that court's decision the law which must be applied in setting resale rates. Accordingly, AT&T's claim that Verizon MA should be directed to file a study under the invalidated rules makes *no* sense because discount rates set in this manner would not be lawful.

AT&T's Motion also echoes Network Plus' Motion in seeking a delay in the examination of new resale discounts until the FCC issues new rules. Here, too the argument is flawed. First, since the current discount rates were set under the invalidated FCC rules, they do *not* meet the statutory standard. Requests to defer the setting of new discount rates under the lawful pricing standard are simply efforts to maintain substantially *higher* discounts than authorized by law. Resellers have already received the benefit of excessive discount rates for over four years. The Department has an obligation to set new rates as soon as practicable to conform to the statute and should not defer its review.

Second, although the FCC may issue new rules, there is *no* lawful action that it can take that would re-impose its previous standards, now invalidated by the Eighth Circuit. The Eighth Circuit *decided* the cost standard applicable to resold services under § 252(d)(3) of the Act, and the Department can apply that standard in setting new resale discounts.

In conclusion, the Eighth Circuit decision clearly established the cost standard governing the setting of resale discounts under the Act, and the Department will have ample information in the case to set the resale discounts based on that standard. Accordingly, the Department should deny AT&T's Motion and proceed with its examination of the study filed by Verizon MA, which correctly applies the Act's cost standard and is consistent with the Department's directives under its *Vote and Order*. To dismiss or delay this case, as AT&T and Network Plus suggest, would simply preserve rates that were set using an unlawful cost standard.

Very truly yours,

Barbara Anne Sousa
cc: Tina Chin, Esquire, Hearing Officer
Michael Isenberg, Esquire, Director - Telecommunications Division
Attached D.T.E. 01-20 Service List